

**DEP Exhibit 3**

**Proposed Standard Offer  
Power Purchase Agreement**

**Docket No. E-100, Sub 167**

**PURCHASE POWER AGREEMENT**

between

**DUKE ENERGY PROGRESS, LLC**

and

**SELLER NAME**

**“Facility Name” Project**

**Initial Delivery Date:** \_\_\_\_\_

**PURCHASE POWER AGREEMENT BY A  
QUALIFYING COGENERATOR OR SMALL POWER PRODUCER**

1 **THIS PURCHASE POWER AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day  
2 of \_\_\_\_\_, 20\_\_\_\_, by and between

3  
4 **DUKE ENERGY PROGRESS, LLC** (“Company”),

5  
6 and

7 \_\_\_\_\_,  
8  
9 a(n) [*insert place of formation* \_\_\_\_\_] [*insert entity type* \_\_\_\_\_] (“Seller”), for the

10  
11 “ \_\_\_\_\_,” Project

12  
13 Seller hereby certifies that the Facility, as defined below, (is/is not) "new capacity," as defined by the  
14 Federal Energy Regulatory Commission (FERC), and that construction of the Facility (was/was not)  
15 commenced on or after November 9, 1978 and that the Facility is a qualifying facility as defined by the  
16 Federal Energy Regulatory Commission (“FERC”) pursuant to Section 210 of the Public Utility  
17 Regulatory Policies Act of 1978 [*and which is a small power producer as defined in G.S. 62-3(27a) - (if*  
18 *applicable)*]. The Facility as defined herein (the “Facility”) shall consist of that certain [*insert description*  
19 *of the Facility including fuel type and Nameplate Capacity rating in AC and DC*] [*where applicable,*  
20 *identify any Storage Resource connected to or incorporated into the Facility along with the Storage*  
21 *Resource’s capacity (MW and MWh)*] which is located at [*insert facility address*].  
22

23 (Hereinafter, the parties are also referred to individually as a “Party” and collectively as the “Parties”).

24  
25 In consideration of the mutual covenants herein contained, the Parties hereto, for themselves, their  
26 successors and assigns, do hereby agree to the following:  
27

28 **1. Service Requirements**

29 1.1 Seller shall sell and deliver exclusively to Company all of the electric power generated by the  
30 Facility, net of the Facility’s own auxiliary electrical requirements, and Company shall purchase,  
31 receive, use and pay for the same, subject to the conditions contained in this Agreement. Upon the  
32 completion of the installation, by Company, of its system upgrades and interconnection facilities at  
33 the point of delivery of Seller's and Company's conductors, Seller shall become responsible for the  
34 payment to Company of any and all charges that may apply, whether or not Seller actually delivers  
35 any electricity to Company. If Seller requests standby, back-up and/or maintenance power for the  
36 Facility’s auxiliary electrical requirements from Company, such power shall be provided to Supplier  
37 pursuant to a separate electric service agreement under Company’s rate tariffs appropriate for such  
38 service.  
39

40 1.2 Electricity supplied by Seller shall be [*single (1)/three (3)*] phase, alternating at a frequency of  
41 approximately sixty (60) cycles, and at a delivery voltage of approximately \_\_\_\_\_ volts,  
42 \_\_\_\_\_wires at a sufficient power factor to maintain system operating parameters as specified by  
43 Company.  
44

45 1.3 Delivery of said Seller’s power shall be at a point of delivery described as follows:  
46 \_\_\_\_\_.

47 1.4 The Contract Capacity of the Facility, as defined in the Terms and Conditions for the Purchase of  
48 Electric Power is \_\_\_\_\_-AC kW/MW. The estimated annual energy production of the Facility is  
49 \_\_\_\_\_kWh.  
50

51 **2. Rate Schedule**

52 The sale, delivery, and use of electric power hereunder, and all services of whatever type to be  
53 rendered or performed in connection therewith, shall in all respects be subject to and in accordance  
54 with Company's Purchased Power Schedule PP-\_\_ [*Variable Rate*] [*10-year Fixed Long-Term*  
55 *Rate*] for [*Distribution*] [*Transmission*] *Interconnection* ("Rate Schedule") and the Terms and  
56 Conditions for the Purchase of Electric Power, both of which are now on file with the North Carolina  
57 Utilities Commission ("Commission"), and are hereby incorporated by reference and made a part  
58 hereof as though fully set forth herein. Said Rate Schedule and Terms and Conditions for the  
59 Purchase of Electric Power are subject to change, revision, alteration or substitution, either in whole  
60 or in part, upon order of said Commission or any other regulatory authority having jurisdiction, and  
61 any such change, revision, alteration or substitution shall immediately be made a part hereof as  
62 though fully written herein, and shall nullify any prior provision in conflict therewith.  
63

64 The language above beginning with "Said Rate Schedule" shall not apply to the Fixed Long-Term  
65 Rates themselves, but it shall apply to all other provisions of the Rate Schedule and Terms and  
66 Conditions for the Purchase of Electric Power, including but not limited to Variable Rates, other  
67 types of charges (e.g., administrative charges), and all non-rate provisions.  
68

69 **3. Initial Delivery Date**

70 The term of this Agreement shall be a minimum of 5 years when contracting for capacity payments  
71 and shall begin upon the first date when energy is generated by the Facility and delivered to  
72 Company and continuing for the term specified in the Rate Schedule paragraph above and shall  
73 automatically extend thereafter unless terminated by either party by giving not less than thirty (30)  
74 days prior written notice. Any automatic extension of this Agreement will be at the Variable Rates  
75 in effect at the time of extension. The term shall begin no earlier than the date Company's  
76 Interconnection Facilities are installed and are ready to accept electricity from Seller which is  
77 requested to be \_\_\_\_\_, 20\_\_\_. Company at its sole discretion may terminate this  
78 Agreement on \_\_\_\_\_, 20\_\_\_ (30 months following the date of the order initially  
79 approving the rates selection shown above which may be extended beyond 30 months if construction  
80 is nearly complete and the Seller demonstrates that it is making a good faith effort to complete its  
81 project in a timely manner<sup>1</sup>) if Seller is unable to provide generation capacity and energy production  
82 consistent with the energy production levels specified in Provision No. 1.4 above.  
83

84 **4. Interconnection Facilities**

85 Unless otherwise required by Company, an Interconnection Agreement pursuant to the North  
86 Carolina Interconnection Procedures, Forms, And Agreements For State-Jurisdictional Generator  
87 Interconnections (Interconnection Standard) shall be executed by Seller, including payments of all  
88 charges and fees associated with the interconnection, before Company will accept this Agreement.  
89 (*Either sentence (a) or (b) as follows is inserted into the agreement as appropriate*) (a) The  
90 Interconnection Facilities Charge shall be specified in the Interconnection Agreement, or (b) The

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<sup>1</sup> Eligible Sellers establishing a Legally Enforceable Obligation on or before November 15, 2016, and seeking payment under rates approved in Docket No. E-100, Sub 140, shall continue to be eligible for such rates, even if they fail to commence delivering power to the utility on or before September 10, 2018, pursuant to Section 1.(c) of Session Law 2017-192, unless the Seller's nameplate capacity along with the combined nameplate capacity of generation facilities connected or with priority rights under the North Carolina Interconnection Procedures to be connected ahead of Seller to the same general distribution substation transformer exceeds the nameplate capacity of the transformer, as determined by Company. The term for these extended Agreements available to eligible E-100 Sub 140 Sellers shall commence on September 10, 2018 and expire no later than 15 years from that date.

91 Interconnection Facilities Charge shall be 1.0 % of the installed cost of metering and other  
92 equipment and is \$ \_\_\_\_\_ per month.  
93

94 **5. Energy Storage**

95 If the Facility is to be equipped with battery storage or other energy storage device (the “Storage  
96 Resource”), the Storage Resource shall be identified in this Agreement. In all cases the Storage  
97 Resource must be charged solely by the Facility and the use of any Storage Resource shall be  
98 operated and equipped in accordance with the system operator’s Energy Storage Protocol, a copy of  
99 which is attached hereto as Exhibit A, as may be modified from time to time by the system operator  
100 (the “Energy Storage Protocol”).  
101

102 **6. Reporting Requirements**

103 Upon request, facilities larger than 100 kW may be required to provide prior notice of annual,  
104 monthly, and day-ahead forecast of hourly production, as specified by the Company. If the Seller  
105 is required to notify the Company of planned or unplanned outages, notification should be made as  
106 soon as known. Seller shall include the start time, the time for return to service, the amount of  
107 unavailable capacity, and the reason for the outage.  
108

109 Upon the execution by Company and Seller in the block provided below, this Agreement together with  
110 attachments shall become an agreement for Seller to deliver and sell to Company and for Company to  
111 receive and purchase from Seller the electricity generated and delivered to Company by Seller from the  
112 above described qualifying generating facility at the rates, in the quantities, for the term, and upon the  
113 terms and conditions set forth herein.

**Witness as to Seller:**

\_\_\_\_\_, **Seller**  
Printed: \_\_\_\_\_  
By \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title \_\_\_\_\_  
This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**ACCEPTED: DUKE ENERGY PROGRESS, LLC**

**Mail Payment/Bill to:**

By \_\_\_\_\_  
Title \_\_\_\_\_  
This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit A**  
**Energy Storage Protocol**

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.
2. The Storage Resource will be controlled by the Seller, within operational limitations described below.
3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility's Contract Capacity as specified in the Agreement.
4. The discharge of stored energy is not permitted while the Facility has received or is subject to a curtailment instruction (i.e., system operator instruction) from the system operator if such discharge would cause the total output of the Facility to exceed the level permitted by the system operator instruction.
5. Ramp rates for Storage Resource shall not exceed 10 percent of the Storage Resource's capacity (MW) on a per minute basis, up or down, at any time that the facility is not generating, unless the system operator has waived this ramping limitation.
6. Scheduling for capturing peak pricing periods and other storage limitations:
  - a. For all (winter and summer) months/days with discrete capacity rate hour window periods ("Capacity Hour Window"), the Seller shall distribute any intended energy storage discharge of the storage device in a manner that levelizes (holds constant), on an expected basis, the total output of the Facility at the highest practical level over the duration of each specific Capacity Hour Window selected by the Seller for energy storage discharge of such calendar day, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Contract Capacity as specified in the Agreement. For clarity, total output of the Facility is not required to be held at the same level across both morning and evening Capacity Hour Windows during winter months. The Seller may, at its discretion, elect to discharge storage across either or both winter morning and evening Capacity Hour Windows, provided that the intended energy storage discharge for each Capacity Hour Window is distributed in a way that holds total Facility output constant across the respective Capacity Hour Window.
  - b. For any storage discharge occurring on weekends and holidays where only Off-Peak energy rates apply, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Contract Capacity as specified in the Agreement.
  - c. For the remaining (shoulder) months without Capacity Hour windows, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Contract Capacity as specified in the Agreement.

7. Company reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Company in a Commercially Reasonable Manner and shall be applied to the Facility and Company's own generating assets on a non-discriminatory basis. If Seller can make a commercially reasonable demonstration to Company, which is approved by Company in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.
8. If identification of Capacity Hours changes over the course of the term of the Agreement, Seller will make commercially reasonable efforts to work with Company to adjust the hours of charging/discharging to coincide with these updated hours. However, Seller shall not be obligated to do so in a way that compromises their original economic value contemplated for storage resource.
9. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

- a) Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.

**PURCHASE POWER AGREEMENT**

between

**DUKE ENERGY PROGRESS, LLC**

and

**SELLER NAME**

**“Facility Name” Project**

**Initial Delivery Date:** \_\_\_\_\_



**PURCHASE POWER AGREEMENT BY A  
QUALIFYING COGENERATOR OR SMALL POWER PRODUCER**

1 **THIS PURCHASE POWER AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day  
2 of \_\_\_\_\_, 20\_\_\_\_, by and between

3  
4 **DUKE ENERGY PROGRESS, LLC** (“Company”),

5  
6 and

7 \_\_\_\_\_,  
8  
9 a(n) [*insert place of formation* \_\_\_\_\_] [*insert entity type* \_\_\_\_\_] (“Seller”), for the

10  
11 “ \_\_\_\_\_,” Project

12  
13 Seller hereby certifies that the Facility, as defined below, (is/is not) "new capacity," as defined by the  
14 Federal Energy Regulatory Commission (FERC), and that construction of the Facility (was/was not)  
15 commenced on or after November 9, 1978 and that the Facility is ~~or will be~~ a qualifying facility as defined  
16 by the Federal Energy Regulatory Commission (“FERC”) pursuant to Section 210 of the Public Utility  
17 Regulatory Policies Act of 1978 [*and which is ~~or will be a hydroelectric generating facility owned and~~*  
18 *~~operated by a small power producer as defined in G.S. 62-3(27a) - (if applicable)~~*]. The Facility as  
19 defined herein (the “Facility”) shall consist of that certain [*insert description of the Facility including fuel*  
20 *type and Nameplate Capacity rating in AC and DC*] [*where applicable, identify any Storage Resource*  
21 *connected to or incorporated into the Facility along with the Storage Resource’s capacity (MW and*  
22 *MWh)*] which is located at [*insert facility address*].

23  
24 (Hereinafter, the parties are also referred to individually as a “Party” and collectively as the “Parties”).

25  
26 In consideration of the mutual covenants herein contained, the Parties hereto, for themselves, their  
27 successors and assigns, do hereby agree to the following:

28  
29 **1. Service Requirements**

30 1.1 Seller shall sell and deliver exclusively to Company all of the electric power generated by the  
31 Facility, net of the Facility’s own auxiliary electrical requirements, and Company shall purchase,  
32 receive, use and pay for the same, subject to the conditions contained in this Agreement. Upon the  
33 completion of the installation, by Company, of its system upgrades and interconnection facilities at  
34 the point of delivery of Seller's and Company's conductors, Seller shall become responsible for the  
35 payment to Company of any and all charges that may apply, whether or not Seller actually delivers  
36 any electricity to Company. If Seller requests standby, back-up and/or maintenance power for the  
37 Facility’s auxiliary electrical requirements from Company, such power shall be provided to Supplier  
38 pursuant to a separate electric service agreement under Company’s rate tariffs appropriate for such  
39 service.

40  
41 1.2 Electricity supplied by Seller shall be [*single (1)/three (3)*] phase, alternating at a frequency of  
42 approximately sixty (60) cycles, and at a delivery voltage of approximately \_\_\_\_\_ volts,  
43 \_\_\_\_\_wires at a sufficient power factor to maintain system operating parameters as specified by  
44 Company.

45  
46 1.3 Delivery of said Seller’s power shall be at a point of delivery described as follows:  
47 \_\_\_\_\_.

48 1.4 The Contract Capacity of the Facility, as defined in the Terms and Conditions for the Purchase of  
49 Electric Power is \_\_\_\_\_-AC kW/MW. The estimated annual energy production of the Facility is  
50 \_\_\_\_\_kWh.  
51

52 **2. Rate Schedule**

53 The sale, delivery, and use of electric power hereunder, and all services of whatever type to be  
54 rendered or performed in connection therewith, shall in all respects be subject to and in accordance  
55 with Company's Purchased Power Schedule PP-\_\_ [*Variable Rate*] [*10-year Fixed Long-Term*  
56 *Rate*] ~~Option [A][B]~~ for [*Distribution*] [*Transmission*] *Interconnection*} ("Rate Schedule") and the  
57 Terms and Conditions for the Purchase of Electric Power, both of which are now on file with the  
58 North Carolina Utilities Commission ("Commission"), and are hereby incorporated by reference  
59 and made a part hereof as though fully set forth herein. Said Rate Schedule and Terms and  
60 Conditions for the Purchase of Electric Power are subject to change, revision, alteration or  
61 substitution, either in whole or in part, upon order of said Commission or any other regulatory  
62 authority having jurisdiction, and any such change, revision, alteration or substitution shall  
63 immediately be made a part hereof as though fully written herein, and shall nullify any prior  
64 provision in conflict therewith.  
65

66 The language above beginning with "Said Rate Schedule" shall not apply to the Fixed Long-Term  
67 Rates themselves, but it shall apply to all other provisions of the Rate Schedule and Terms and  
68 Conditions for the Purchase of Electric Power, including but not limited to Variable Rates, other  
69 types of charges (e.g., administrative charges), and all non-rate provisions.  
70

71 **3. Initial Delivery Date**

72 The term of this Agreement shall be a minimum of 5 years when contracting for capacity payments  
73 and shall begin upon the first date when energy is generated by the Facility and delivered to  
74 Company and continuing for the term specified in the Rate Schedule paragraph above and shall  
75 automatically extend thereafter unless terminated by either party by giving not less than thirty (30)  
76 days prior written notice. Any automatic extension of this Agreement will be at the Variable Rates  
77 in effect at the time of extension. The term shall begin no earlier than the date Company's  
78 Interconnection Facilities are installed and are ready to accept electricity from Seller which is  
79 requested to be \_\_\_\_\_, 20\_\_\_. Company at its sole discretion may terminate this  
80 Agreement on \_\_\_\_\_, 20\_\_\_ (30 months following the date of the order initially  
81 approving the rates selection shown above which may be extended beyond 30 months if construction  
82 is nearly complete and the Seller demonstrates that it is making a good faith effort to complete its  
83 project in a timely manner<sup>1</sup>) if Seller is unable to provide generation capacity and energy production  
84 consistent with the energy production levels specified in Provision No. 1.4 above.  
85

86 **4. Interconnection Facilities**

87 Unless otherwise required by Company, an Interconnection Agreement pursuant to the North  
88 Carolina Interconnection Procedures, Forms, And Agreements For State-Jurisdictional Generator  
89 Interconnections (Interconnection Standard) shall be executed by Seller, including payments of all  
90 charges and fees associated with the interconnection, before Company will accept this Agreement.  
91 (*Either sentence (a) or (b) as follows is inserted into the agreement as appropriate*) (a) The

---

<sup>1</sup> Eligible Sellers establishing a Legally Enforceable Obligation on or before November 15, 2016, and seeking payment under rates approved in Docket No. E-100, Sub 140, shall continue to be eligible for such rates, even if they fail to commence delivering power to the utility on or before September 10, 2018, pursuant to Section 1.(c) of Session Law 2017-192, unless the Seller's nameplate capacity along with the combined nameplate capacity of generation facilities connected or with priority rights under the North Carolina Interconnection Procedures to be connected ahead of Seller to the same general distribution substation transformer exceeds the nameplate capacity of the transformer, as determined by Company. The term for these extended Agreements available to eligible E-100 Sub 140 Sellers shall commence on September 10, 2018 and expire no later than 15 years from that date.

92 Interconnection Facilities Charge shall be specified in the Interconnection Agreement, or (b) The  
93 Interconnection Facilities Charge shall be 1.0 % of the installed cost of metering and other  
94 equipment and is \$\_\_\_\_\_ per month.  
95

96 **5. Energy Storage**

97 If the Facility is to be equipped with battery storage or other energy storage device (the “Storage  
98 Resource”), the Storage Resource shall be identified in this Agreement. In all cases the Storage  
99 Resource must be charged solely by the Facility and the use of any Storage Resource shall be  
100 operated and equipped in accordance with the system operator’s Energy Storage Protocol, a copy of  
101 which is attached hereto as Exhibit A, as may be modified from time to time by the system operator  
102 (the “Energy Storage Protocol”).  
103

104 **6. Reporting Requirements**

105 Upon request, facilities larger than ~~1003,000~~ kW may be required to provide prior notice of annual,  
106 monthly, and day-ahead forecast of hourly production, as specified by the Company. If the Seller  
107 is required to notify the Company of planned or unplanned outages, notification should be made as  
108 soon as known. Seller shall include the start time, the time for return to service, the amount of  
109 unavailable capacity, and the reason for the outage.  
110

111 Upon the execution by Company and Seller in the block provided below, this Agreement together with  
112 attachments shall become an agreement for Seller to deliver and sell to Company and for Company to  
113 receive and purchase from Seller the electricity generated and delivered to Company by Seller from the  
114 above described qualifying generating facility at the rates, in the quantities, for the term, and upon the  
115 terms and conditions set forth herein.

**Witness as to Seller:**

\_\_\_\_\_, Seller  
Printed: \_\_\_\_\_ By \_\_\_\_\_  
Printed: \_\_\_\_\_ Printed: \_\_\_\_\_  
Title \_\_\_\_\_  
This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**ACCEPTED: DUKE ENERGY PROGRESS, LLC**

**Mail Payment/Bill to:**

By \_\_\_\_\_  
Title \_\_\_\_\_  
This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**Exhibit A**  
**Energy Storage Protocol**

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.
2. The Storage Resource will be controlled by the Seller, within operational limitations described below.
3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility's Contract Capacity as specified in the Agreement.
4. The discharge of stored energy is not permitted while the Facility has received or is subject to a curtailment instruction (i.e., ~~System Operator Instructions~~ system operator instruction) from the system operator if such discharge would cause the total output of the Facility to exceed the level permitted by the system operator instruction.
- ~~5.~~ Ramp rates for Storage Resource shall not exceed 10 percent of the Storage Resource's capacity (MW) on a per minute basis, ~~whether~~ up or down, at any time that the ~~Facility~~ facility is not generating, ~~unless the system operator has waived this ramping limitation.~~
- ~~6.5.~~ ~~When the Facility is generating, the Storage Resource shall not act to increase the net ramp rate of the Facility by more than 5 percent of the Storage Resource's capacity (MW) per minute in relation to the output from the Facility alone, over a one-minute interval, up or down, unless the system operator has waived this ramping limitation.~~

~~7.6.~~ Scheduling for capturing peak pricing periods and other storage limitations:

- a. For all (winter and summer) months/days with ~~Premium Peak windows~~ discrete capacity rate hour window periods ("Capacity Hour Window"), the Seller shall distribute any intended energy storage discharge of the storage device in a manner that levelizes (holds constant), on an expected basis, the ~~combined total~~ total output of ~~solar and storage~~ the Facility at the highest practical level during over the ~~Premium Peak hours~~ duration of each specific Capacity Hour Window selected by the Seller for energy storage discharge of such calendar day, except as limited by ramp rate criteria and, inverter capability, availability, state of charge and the Facility's Contract Capacity as specified in the Agreement. For clarity, total output of the Facility is not required to be held at the same level across both morning and evening Capacity Hour Windows during winter months. The Seller may, at its discretion, elect to discharge storage across either or both winter morning and evening Capacity Hour Windows, provided that the intended energy storage discharge for each Capacity Hour Window is distributed in a way that holds total Facility output constant across the respective Capacity Hour Window.
- ~~b.~~ For any storage discharge occurring on weekends and holidays where only Off-Peak energy rates apply, the Seller shall apply the same ~~be permitted to distribute~~ discharge logic that is applied to Weekdays/non-Holidays, for the respective month.
- ~~c.b.~~ If (if any) of the storage device is AC (MW) limited, discharge may begin prior to the Premium Peak window to allow the storage device to reach its Allowable Depth (as

~~defined below) of Discharge across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Contract Capacity as specified in the Agreement.~~

~~d. For the remaining (shoulder) months without Premium Peak Capacity Hour windows, the Seller shall be permitted to distribute any discharge (if any) of the storage device in a way that levelizes (holds constant) the combined output across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of solar charge and storage at the highest practical level during three consecutive hours beginning with the hour of sunset.~~

~~e.c. If the storage device is AC (MW) limited, discharge may continue beyond the three-hour window until the storage device reaches its Allowable Depth of Discharge Facility's Contract Capacity as specified in the Agreement.~~

~~8.7.~~ Company reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Company in a Commercially Reasonable Manner and shall be applied to the Facility and Company's own generating assets on a non-discriminatory basis. If Seller can make a commercially reasonable demonstration to Company, which is approved by Company in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.

~~8. If identification of Capacity Hours changes over the course of the term of the Agreement, Seller will make commercially reasonable efforts to work with Company to adjust the hours of charging/discharging to coincide with these updated hours. However, Seller shall not be obligated to do so in a way that compromises their original economic value contemplated for storage resource.~~

9. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

~~a) "Allowable Depth of Discharge" shall mean the MWh energy storage potential, considering the original equipment manufacturer's recommendations and any emergent operating limitations, at a given point in time.~~

~~b)~~

a) Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.